APPEAL NO. 010856

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 4, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the eighth and ninth quarters, and that the claimant's compensable left wrist injury does not extend to include her elbow, shoulder, neck, and lower back. The claimant has appealed these determinations, alleging: (1) that the functional capacity evaluation was not worthy of belief; (2) that the finding that the claimant's unemployment was a direct result of her compensable injury is inconsistent with the rest of the decision; and (3) that the hearing officer failed to address the extent of injury issue. The respondent (carrier) has responded, and urges that the hearing officer's determinations are correct and should be affirmed.

DECISION

Affirmed.

Sections 408.142(a) and 408.143, and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) provide the statutory and regulatory requirements for entitlement to SIBs. The parties stipulated that the Texas Workers' Compensation Commission determined that the claimant sustained a compensable injury on _____; that impairment income benefits were not commuted; that the claimant has an impairment rating of 15% or greater; that the qualifying period for the eighth quarter was from March 25, 2000, through June 23, 2000, and that the qualifying period for the ninth quarter was from June 24, 2000, through September 22, 2000.

Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

The hearing officer made findings that the claimant had an ability to work, that the medical records from Dr. S do not sufficiently set out how the compensable injury precluded the claimant from seeking any employment, and that there were other medical records which sufficiently set out that the claimant could work in some capacity.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the

inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer's determinations on the issues in this case were factual determinations based upon her evaluation of the weight and credibility of the evidence. These determinations are fully supported by evidence in the record. We will reverse a factual determination by a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the evidence for that of the hearing officer. Because the claimant had an ability to work and did not make a good faith effort to obtain employment during the qualifying periods, she is not entitled to SIBs for the eighth and ninth quarters.

The hearing officer's finding on direct result is not inconsistent with the rest of the decision. A claimant's unemployment may be a direct result of his or her compensable injury without automatically relieving the claimant of any further obligation to seek employment.

The hearing officer did address the extent-of-injury issue in the Statement of the Evidence and in Findings of Fact Nos. 2, 3, and 4, and in Conclusion of Law No. 5. An injury is defined as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm." Section 401.011(26). Whether an employee has "a disease or infection naturally resulting from the damage or harm," or whether an injury extends to a particular member of his body is a factual matter for the hearing officer to determine. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. The hearing officer's determination on the issue was not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Michael B. McShane
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. S. Barnes
Appeals Judge